

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

V.

KWAME R. BROWN,

Defendant.

No. 1:12-cr-00135-RJL

SENTENCING MEMORANDUM OF DEFENDANT KWAME R. BROWN

Introduction

On November 13, 2012, Kwame R. Brown will appear before this Honorable Court for sentencing having pled guilty to a one count Information alleging bank fraud¹ in providing false information to secure a bank loan. Through undersigned counsel, Mr. Brown submits this memorandum in support of a requested sentence of: (i) 6 days of imprisonment with execution of all 6 days of imprisonment suspended, followed by two (2) years of supervised release and 200 hours of community service; and (ii) no fine or restitution, given both his inability to pay a fine and the fact that there was no financial loss suffered as a result of Mr. Brown's conduct. Such a sentence is "sufficient, but not greater than necessary," to achieve the purposes of sentencing set forth in 18 U.S.C. section 3553(a)(2).

Mr. Brown acknowledges that his crime was an inexcusable breach of the standard of conduct expected of him by both the public and himself. Having pled guilty prior to indictment,

¹ As part of his plea agreement, Mr. Brown also has entered a guilty plea in the Superior Court of the District of Columbia to one count of unlawful campaign expenditure in Case No. 2012 CMD 009802.

he has fully and clearly accepted responsibility for his conduct and stands ready to accept the consequences of that conduct. **Ex. 1** (K. Brown letter).

For the reasons explained below, imprisonment is not necessary to protect society from Mr. Brown, to provide him with rehabilitative treatment or training, or to achieve the goal of deterrence. Rather, in view of Mr. Brown's unequivocal acceptance of responsibility, his well-documented history of extraordinary community service, the vital role he plays as a husband and father for his young family, the best means of attaining a sentence that is "sufficient, but not greater than necessary," to achieve the purposes of sentencing set forth in 18 U.S.C. section 3553(a)(2) is to impose the requested sentence.

Argument

A. The Proposed Sentence Is Warranted Under 18 U.S.C. section 3553(a)

Section 3553(a) provides that a district court "shall impose a sentence sufficient, but not greater than necessary, to comply with the purposes set forth in paragraph (2)," which are "the need for the sentence imposed-

(A) to reflect the seriousness of the offense, to promote respect for the law, and to provide just punishment for the offense;

(B) to afford adequate deterrence to criminal conduct;

(C) to protect the public from further crimes of the defendant; and

(D) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner."

In devising a sentence that satisfied the "overarching provision instructing sentencing courts to 'impose a sentence that is sufficient but not greater than necessary' to accomplish the goals of sentencing," *Kimbrough v. United States*, 552 U.S. 85, 101 (2007); *see also Pepper v.*

United States, 131 S. Ct. 1229, 1242 (2011), a district court must also consider the nature and circumstances of the offense and the history and characteristics of the defendant, 18 U.S.C. section 3553(a)(1), the kinds of sentences available, 18 U.S.C. section 3553(a)(3), the sentencing guidelines and policy statements, 18 U.S.C. sections 3553(a)(4) & (a)(5), the need to avoid unwarranted sentence disparities among defendants with similar records who have been found guilty of similar conduct, 18 U.S.C. section 3553(a)(6), and the need to make restitution to any victims of the offense, 18 U.S.C. section 3553(a)(7). *See also United States v. Booker*, 543 U.S. 220, 245-46, 259-60 (2005). The Supreme Court repeatedly has made clear that the range prescribed by the now-advisory Guidelines is but one of the sentencing court's considerations – “a starting point and initial benchmark” – and that the court must weigh all relevant Section 3553(a) factors to “make an individualized assessment based on the facts presented.” *See Gall v. United States*, 552 U.S. 38, 50-52 (2007); *Pepper*, 131 S. Ct. at 1242-43.

Section 3553(a)(1) provides a “broad command to consider ‘the nature and circumstances of the offense and the history and characteristics of the defendant.’ ” *Gall*, 552 U.S. at 50 n.6. That directive is consistent with the Supreme Court's observation that “the punishment should fit the offender and not merely the crime.” *Pepper*, 131 S. Ct. at 1240, *citing Williams v. New York*, 337 U.S. 241, 247 (1949). It is similarly consistent with Congress' express directive that “[n]o limitation shall be placed on the information” a sentencing court may consider “concerning the [defendant's] background, character, and conduct.” *Id.*, *citing* 18 U.S.C. section 3661. Given Mr. Brown's personal history and characteristics, and the nature of his offense, the suspension of the execution of any sentence of imprisonment with a period of supervised release and community service is an appropriate sentence.

Mr. Brown's Personal History and Characteristics

Mr. Brown was born in the District of Columbia in 1970. Mr. Brown is a lifetime resident of the Washington DC metropolitan area, having lived the majority of his life in Virginia and the District of Columbia. The only exception was his residence in Talladega, Alabama, during college. He attended public schools in the Metropolitan Washington area, and graduated from Woodrow Wilson High School in the District in 1989. Mr. Brown earned a Bachelor of Sciences degree in marketing from Morgan State University in Baltimore, MD in 1994. During the summers of 1998 and 1999, he attended the business executive program at the Tuck School of Business at Dartmouth College in Hanover, New Hampshire. During 2005, Mr. Brown attended a two-week course through the John F. Kennedy School of Government at Harvard University in Cambridge, Massachusetts, from which he received a senior management certificate.

From the time he was about 13 years old, Mr. Brown has been generally employed taking responsibility for supporting himself, and later his family. He worked at a variety of entry level jobs through high school and college to meet life expenses, and to support himself and his mother. In 1997, Mr. Brown was appointed the acting director of the Office of Business Liaison for the United States Department of Commerce. He left this position in 1999, and worked intermittently as a consultant until May of 2002 when he began employment as president of the Minority Supply Development Council (MSDC) located in Silver Spring, MD. As president of MSDC, Mr. Brown was responsible for the management and supervision of the day to day operations of the organization, goal/agenda development and implementation, and communication with the public and constituents. He held this position until January 2005.

In November of 2004, Mr. Brown was elected a member of the Council of the District of Columbia, and began his first term as an At-Large Member in January of 2005. In November of 2008, he was re-elected to this position, and in November of 2010, he was elected as Chairman of the Council of the District of Columbia.

Mr. Brown married Marcia Brown on June 4, 1994, in Washington, DC, a first marriage for them both. They had been acquainted since August 18, 1989, the defendant's first day of college. Ms. Brown has two master's degrees- one in English, and another in American Studies. Ms. Brown has been a project manager with the H Street Development Corporation since 2010. Mr. Brown and his wife have two children. Lauren Brown, age 11, is in the seventh grade at Alice Deal Middle School, and Kwame Brown, age 9, is in the fifth grade at John Eaton Elementary School. Mr. Brown's children are bright and accomplished without health or behavioral concerns. He has built strong relations with them in an effort to afford them everything he did not experience during his formative years. Mr. Brown is integrally involved in the lives of his children, and he does "everything" with his children to include eating daily meals together, going to movies, and going on various trips.

Despite the dysfunctional nature of his own upbringing, Mr. Brown has successfully created a stable and loving relationship among himself, his wife, and his children. Mr. Brown has established positive relationships with both of his parents (who have long been divorced from each other), and his parents have positive relationships with Mr. Brown's children. By dint of hard work, perseverance, and his strong faith, he has constructed an exemplary family life.

Mr. Brown is deeply rooted in the various communities here in the District, as his election to public office demonstrates. He has devoted a great deal of time and work to improving the educational systems of the city. He lead the way in restoring vocational education

programs in our public schools. He has been a stalwart supporter of programs for our senior citizens. He has developed and implemented public policy that is supportive of small and local businesses in the District. He has done much more than most to improve the quality of life for a broad range of District residents.

The Nature and Circumstances of the Offense

Mr. Brown has committed a serious crime. Mr. Brown takes full responsibility for his actions in that regard. Mr. Brown has never denied committing the offense for which he pled guilty. When confronted with the then alleged conduct by prosecutors, Mr. Brown immediately admitted his guilt, and accepted responsibility for that conduct. Beyond accepting responsibility for his wrongful conduct, Mr. Brown is prepared to accept the further consequences of that conduct. Mr. Brown acknowledges that he submitted an application to Industrial Bank for a home equity loan (“2005 loan application”) requesting to borrow \$184,000. Mr. Brown submitted three documents to Industrial Bank to demonstrate his income for purposes of qualifying for this loan: (1) a bi-monthly earnings statement from the Council of the District of Columbia, (2) a Wage and Tax Reconciliation Form from a company, and (3) a one-page form entitled “Request for Verification of Employment (“Verification of Employment Form”), purporting to provide verification of employment and salary information for Mr. Brown by one of his employers. Mr. Brown admits that this information submitted with the 2005 loan application was false and that Mr. Brown filled out and submitted the application and documents with the specific intent to overstate his annual income in an effort to ensure that Industrial Bank would approve his loan application.

Mr. Brown also acknowledges that he submitted another loan application to Industrial Bank (“July 2007 loan application”), this time seeking to borrow \$56,000 for the

purpose of purchasing a boat. As part of this loan application, Mr. Brown submitted two documents to verify his employment; (1) a bi-monthly earnings statement from the Council of the District of Columbia, and (2) an Internal Revenue Service Form 1099 for tax year 2006, purporting to be from a different company, showing income to Mr. Brown in the amount of \$85,000 ("Company Form 1099"). In fact, Mr. Brown earned only \$35,000 from the company in 2006 and the Company Form 1099 for that year which Mr. Brown actually received from the company stated that Mr. Brown's income was \$35,000. Before submitting the Company Form 1099 to Industrial Bank, Mr. Brown altered the form by changing the "3" to an "8," so that it appeared that he earned \$85,000 instead of \$35,000. Mr. Brown admits that this information submitted with the July 2007 loan application was false in that Mr. Brown filled out and submitted the application and documents with the specific intent to overstate his annual income in an effort to ensure that Industrial Bank would approve his loan application.

Mr. Brown submits in mitigation- and not by way of excuse- of the offense conduct, to which he has admitted, that he provided false information/documents to secure both the 2005 and July 2007 loans, and that neither loan resulted in any financial loss to Industrial Bank. The 2005 loan for \$184,000 has been fully repaid, and the boat loan is being repaid pursuant to its terms. While Mr. Brown induced Industrial Bank to make loans to which he may not have been entitled, it was never his intent to not pay, or to default on either loan. He has repaid, or is repaying all of the borrowed funds.

It also is absolutely clear that Mr. Brown did not use his public office, or public position to secure either loan. The government has not alleged that Mr. Brown used his public office in any way with respect to the offense conduct. The offense conduct is serious criminal conduct, but the seriousness of the offense was not exacerbated by Mr. Brown using his public office, or

public position to accomplish the crime. The criminal conduct involved was committed by a public official, but was wholly private conduct.

In an effort to begin making amends for his conduct, Mr. Brown has cooperated fully with federal authorities in an effort to provide assistance in furthering the investigation and prosecution of illegal activities here in the District. Mr. Brown also recognizes and regrets the negative impact his actions have had within the District. His conduct has brought shame upon the city he loves so much, the Council of the District of Columbia that he once lead, his family, and himself. He has been publically humiliated, forced to resign from his elected office as Chairman, and is now a convicted felon. His fall, all of his own doing, has been very public and personally painful for him and his family. The embarrassment that he has caused his wife and children has been the worst for him, and he is doing all he can to make amends to them.

Mr. Brown had been held up as a role model to many here in the District, especially to his children, his nieces and nephews, and other young African American males. Among the values that he tried to teach them were honesty and integrity. Mr. Brown is particularly embarrassed about providing false information to secure bank loans. He recognizes that lying betrayed what he tried to demonstrate as a father and a mentor, and has badly tarnished the example he had been. He hopes that his acknowledgement of wrongdoing, his full acceptance of responsibility, and his cooperation with the federal authorities, will allow him to begin the process of correcting his errors. His hope is that his acknowledgement of his wrongdoing can serve as an example for young people of what not to do albeit at great personal expense.

Mr. Brown absolutely acknowledges the adverse impact that his wrongdoing has had in diminishing the respect that citizens of the District have for their elected officials in the conduct of their private lives. Mr. Brown fully understands that his conduct has added to the poor image

of the District government at a time when that image is under substantial question. Throughout the great majority of his adult life, Mr. Brown has been a contributor to a positive image of his hometown. On this occasion, he has not made a positive difference, and he is genuinely remorseful about that.

As noted above, Mr. Brown provided false information to Industrial Bank to secure the loans. It was also Mr. Brown's intent to repay those loans, and as noted in the pre sentence report no loss was actually suffered by the bank as the loans have been or are being repaid. While there is no excusing Mr. Brown's conduct, it was criminal, stupid, and arrogant, he never intended that the loans would not be re-paid in full.

B. The Requested Sentence Is Authorized

A sentence of 6 days imprisonment with the execution of all of the imprisonment suspended with two (2) years of supervised release is not precluded by any statute or by the sentencing guidelines. Because the bank fraud conviction is Class B felony, Mr. Brown is not eligible to receive probation, 18 U.S.C. section 3561(a)(1). The requested sentence would be consistent with Congress' directive that "sentencing decisions should be designed to ensure that prison resources are, first and foremost, reserved for those violent and serious offenders who pose the most dangerous threat to society," Pub. L. No. 98-473, § 239, 98 Stat. 1987, 2039 (1984) (set forth at 18 U.S.C. § 3551).

C. The Guidelines Calculation

Pursuant to the plea agreement, Mr. Brown's total offense level is 5 and his advisory guidelines range is 0-6 months. This calculation is based upon a base offense level of 7 for the bank fraud conviction, and a downward adjustment for acceptance of responsibility (-2

levels) pursuant to USSG section§ 3E1.1(a). Mr. Brown, a first time offender with a criminal history score of zero, falls under criminal history category I, which leads to a sentencing guidelines range of 0-6 months. This is the calculation reflected in the plea agreement reached between Mr. Brown and the government, and the United States probation office agrees with this calculation.

D. The Need to Avoid Unwarranted Disparities

The requested sentence would not create a disparity, much less an unwarranted disparity, among defendants with similar records who have been found guilty of similar conduct. 18 U.S.C. section 3553(a)(6). Conversely, a sentence providing for an executed sentence of imprisonment would fit neither the offense, nor this offender. As discussed above, Mr. Brown acknowledges the serious nature of his actions, accepts full responsibility for his misconduct, and does not suggest that what he did should be excused, condoned, or minimized. Yet he has pled guilty- at the very first opportunity- to conduct that, though deserving of criminal punishment, does not necessitate a sentence of incarceration. The circumstances of Mr. Brown's offense have been magnified because his acts were committed by an elected official, however, the underlying conduct does not involve the use of his public office in any way.

Mr. Brown has cooperated as fully as he could with the government in its investigation of his conduct and with respect to other matters. This cooperation also underscores the fact Mr. Brown is deserving of the requested sentence, and that a sentence of incarceration for any time period would not fit this offender.

E. The Requested Sentence Is Sufficient, But Not Greater than Necessary, to Satisfy the Purposes of Punishment

The requested sentence plus community service will achieve retributive justice, and is sufficient, but not greater than necessary, to satisfy the purposes of punishment as articulated in 18 U.S.C. section 3553(a)(2). Specifically, the punishment reflects the seriousness of the offense, promotes respect for the law, and provides just punishment for the offense; it affords adequate deterrence; and, it protects the public from further crimes of Mr. Brown. Mr. Brown is a non-violent, first-time offender, with a respected record of positive contributions to his community. He has fully accepted responsibility for his conduct, having pled guilty pre-indictment, and he has expressed genuine remorse. *See Ex. 1.* Mr. Brown has demonstrated respect for the law by cooperating fully with law enforcement, and providing assistance in the government's ongoing investigations. The stigma of a federal felony conviction, resignation from elected office, and the highly publicized nature of Mr. Brown's guilty plea constitute substantial punishment for Mr. Brown, as he has suffered public humiliation and intense media scrutiny as a result of his actions. He has already been subjected to embarrassment and shame in front of his family, and friends. Along with the requested sentence which would include community service, this degree of humiliation achieves retributive justice that fits the crime. With regard to deterrence, the requested punishment is an adequate and appropriate penalty that will serve the purpose of deterring Mr. Brown from breaking the law again. The highly publicized nature of these proceedings also serves as a unique and significant deterrent to others who may consider committing similar crimes in the future. Mr. Brown has been shaken to his core by the events that have unfolded over the past months. As his statement to the Court suggests, not only is he genuinely remorseful about his misconduct, he is determined to make a positive example of

himself so that others in his community can learn from his mistakes. *See* **Ex. 1**. With regard to protecting the public, Mr. Brown poses no danger to society that would require his incarceration.

Conclusion

For the foregoing reasons, Mr. Brown respectfully requests that the Court impose a sentence of 6 days imprisonment² with the execution of all 6 days of imprisonment suspended, two (2) years of supervised release that includes 200 hours of community service, and no fine or restitution.

Respectfully submitted,

/s/ Frederick D. Cooke, Jr.

Frederick D. Cooke, Jr., D.C. Bar No. 164608
Rubin, Winston, Diercks, Harris & Cooke, LLP
1201 Connecticut Avenue, NW, Suite 200
Washington, D. C. 20036
202 861 0870
202 429 0657 (facsimile)
fcooke@rwdhc.com

Counsel for Defendant Kwame R. Brown

² Mr. Brown is aware that the government has requested a sentence of 6 days imprisonment to be served on week-ends in this matter. Mr. Brown believes that the execution of any period of imprisonment that may be imposed by this Court should be suspended.

CERTIFICATE OF SERVICE

I, Frederick D. Cooke, Jr., do hereby certify that on this 1st day of November, 2012 a copy of the foregoing Emergency Unopposed Motion was caused to be served by ECF to the following:

Mary Connor, Esq.
David S. Johnson, Esq.
Assistant United States Attorneys
Office of the United States Attorney
for the District of Columbia
555 4th Street, NW
Washington, D.C. 20530

/s/ Frederick D. Cooke, Jr.

Frederick D. Cooke, Jr